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city is liable in damages for such injury, provided the passenger exercised ordinary care, under all the circumstances, to avoid the negligence of the city.

2. CITY STREETS—*Defects—Notice—Reasonable time to repair.* A city is entitled to a reasonable time after the discovery of a defect in its sidewalks, within which to remove or remedy the same, and is not liable for injuries resulting from such defect before that time.

3. CITY STREETS—*Defective sidewalks—Action for personal injuries—Province of jury.* In an action by a traveller against a city for a personal injury resulting from a defective sidewalk, it is for the jury to determine, upon the circumstances of the particular case, whether the traveller, who previously had knowledge of the defect, had the right to assume that the defect had been remedied, or the city was negligent in having failed to do so. It is error in the trial court to give instructions which invade the province of the jury in these particulars.

SUPERVISORS OF NOTTOWAY COUNTY V. J. L. POWELL AND TOWN OF CREWE.—Decided at Richmond, March 17, 1898. *Buchanan, J.* Absent, *Cardwell, J.*:

1. MANDAMUS—*When it will issue.* The writ of *mandamus* only issues where there is a clear and specific legal right to be enforced, or a duty which ought to be and can be performed, and there is no other specific and adequate legal remedy.

2. POWERS OF BOARD OF SUPERVISORS. The powers and duties of the Board of Supervisors of a county are fixed by statute, and it has no other powers than those conferred expressly or by necessary implication.

3. MANDAMUS—*County levies—Failure to collect—Adequate remedy.* *Mandamus* is not the appropriate remedy to compel a county treasurer to collect tickets for county levies placed in his hands for collection. The Board of Supervisors have a complete and adequate remedy under the provisions of chapters 36 and 37 of the Code and acts amendatory thereof, by which they can charge him with that portion of the levies which he has failed to collect, and in such case a *mandamus* will not be issued.

GUGGENHEIMER & CO. V. ROGERS AND OTHERS.—Decided at Richmond, March 24, 1898. *Harrison, J.* Absent, *Cardwell, J.*:

1. TRUSTS AND TRUSTEES—*Sale under a second deed of trust—Expenses and costs—Application of proceeds.* The grantor in a deed of trust conveyed horses to a trustee to secure creditors, retaining possession, use, and profits for one year, and providing for sale on default after that time. A few days thereafter he conveyed the same horses to another trustee to secure a different creditor, and directs the trustee to take immediate possession of the horses, provide for their care and feed till day of sale, make sale of them as soon as practicable, and out of the proceeds to pay all costs and expenses, including the care and feed of the horses, and a commission of five per cent. to the trustee, and the residue to the creditors secured. The trustee in the second deed took immediate possession and paid for the care and feed of the horses, and, after advertising in the manner provided by the second deed, and giving notice to the creditors secured in the first deed, sold the horses at public auction. The creditors secured in the first deed were present at the sale,

the trustee acted with discretion, and the horses sold for a fair price, though not for enough to pay the costs and expenses, and the debts secured in the first deed. The trustee deducted from the proceeds of sale the expenses of the care and feed of the horses, and the expenses of sale, including a commission of five per cent. to the trustee, as provided by the deed under which he acted, and also a fee paid to counsel.

Held: The trustee did what a court of equity would have directed, if applied to, and the deductions made by him from the proceeds of sale were properly made and rightly credited to him.

2. TRUSTS AND TRUSTEES—*Counsel fees.* The trustee having been allowed the amount claimed for counsel fees prior to a final decree in this cause, will not, under the circumstances of this case, be granted further allowance on that account on a bill of review filed by the adverse party.

WALKE & WIFE V. MOORE AND OTHERS.—Decided at Richmond, March 31, 1898.—*Riely, J.* Absent, *Cardwell, J.*:

1. CONVEYANCE TO A TRUSTEE FOR WOMAN AND HER CHILDREN—*Fee in wife—Motive for gift.* A deed which conveys to a trustee real and personal property for the sole and separate use of a married woman and her children, with power to the trustee, upon the written request of the woman, to sell any or all of the property and re-invest the proceeds, and reserving to the married woman the right to dispose of all the property “by instrument of writing in the nature of a last will and testament,” vests in the married woman an equitable estate in fee in the real estate, and an absolute estate in the personal property. The mention of the children merely expresses the motive for the gift to the mother.

2. SETTLEMENT ON WIFE AND CHILDREN—*Power to wife to direct sale and re-invest—Effect of wife uniting with trustee in deed of conveyance.* Under the powers conferred by a deed to a trustee for the sole and separate use of married woman and her children, with power to the trustee at any time when he shall be so requested in writing by the married woman (deeming it for the benefit of her and her children) to sell and re-invest the proceeds, a deed from the trustee to a purchaser of the land in which the married woman unites is a sufficient compliance with the provisions of the settlement which requires the trustee to convey on the request in writing of the married woman; and the necessary inference from the conveyance itself is that the trustee deemed the sale to be for the benefit of the married woman and her children.

3. POWERS—*Execution of—Intent—How shown—Case in judgment.* The execution of a power is a matter of intention, but the intention need not be expressed in the conveyance, or other instrument made in execution of the power. It is sufficient if it appears by words, acts, or deeds showing the intention. The intention is demonstrated where there has been some reference in the will, or other instrument, to the powers; or a reference to the property which is the subject on which it is to be executed; or, where the provision in the will or other instrument executed by the donee of the power would be otherwise ineffectual, or a mere nullity—in other words, would have no operation except as an execution of the power. The case in judgment comes within both of the last two classifications.